

TEMKIN WIELGA HARDT & LONGENECKER LLP

1900 Wazee Street, Suite 303

Denver, CO 80202

Elizabeth H. Temkin
Direct: (303)382-2900
temkin@twhlaw.com

Phone: (303)292-4922
Fax: (303)292-4921
www.twhlaw.com

October 24, 2008

VIA EMAIL

Mr. Ken Landau
California Regional Water
Quality Control Board
Central Valley Region
11020 Sun Center Drive, # 200
Rancho Cordova, CA 95670-6114
klandau@waterboards.ca.gov

Re: Newmont USA Limited's Comments on Tentative NPDES Permit for the
City of Grass Valley Wastewater Treatment Plant, and Tentative Cease
and Desist Order to the City of Grass Valley

Dear Mr. Landau:

Newmont USA Limited ("Newmont") appreciates the opportunity to submit comments to the Central Valley Regional Water Quality Control Board (the "Board") in response to the Regional Board's September 23, 2008 notice soliciting comments on the Tentative Renewal of Waste Discharge Requirements for the City of Grass Valley (the "City") Wastewater Treatment Plant Nevada County, NPDES No. CA0079898 ("Tentative NPDES Permit") and the Tentative Order to the City of Grass Valley Wastewater Treatment Plant Nevada County to Cease and Desist From Discharging Contrary to Requirements, No. R5-2008-XXXX ("Tentative Cease and Desist Order"). Newmont, through its undersigned counsel, submits the following comments:

First, the Tentative NPDES Permit Fact Sheet states: "An abandoned mine portal (Drew Tunnel), *owned by Newmont USA Limited* was exposed on the City's property during excavation for the chlorine contact chamber in 2000." See Tentative NPDES Permit, Attachment F, pg. F-4 (emphasis added). This statement is incorrect. Newmont has no ownership interest in the Drew Tunnel. A company called New Verde Mines LLC has title to certain mineral rights in the area of the Drew Tunnel. The City itself also holds title to certain mineral rights in the area and the Drew Tunnel portal is on land owned by the City of Grass Valley. Newmont has provided documentation to the Board multiple times on these issues. Copies of relevant prior correspondence is attached as

Attachment A-C to this letter and incorporated by reference. Each time these issues have come to the Board, the Board has modified the disputed language to accurately reflect that Newmont has no ownership interest at the Drew Tunnel. The quoted language in the Tentative NPDES Permit should be similarly modified.

The referenced statement also is incorrect to the extent it omits the fact that it was the City that excavated into the abandoned mine portal, against the advice of its consultant and without consulting Regional Board staff on the regulatory implications of doing so. Newmont, in turn, never operated the Massachusetts Hill Mine, which was last mined more than one hundred years ago and which is drained by the Drew Tunnel. In fact, Newmont had no knowledge that the Drew Tunnel drainage even existed, until the City contacted Newmont, after the City first reported the flow to the Regional Board.

Second, the Tentative NPDES Permit Fact Sheet states: "The Discharger's ability to comply with manganese effluent limitations by the 1 March 2010 compliance date in this Order for manganese depends on timely action by Newmont to participate in the resolution of the mine discharge." See Tentative NPDES Permit, Attachment F, pg. F-6. The Tentative Cease and Desist Order includes nearly identical language. See Tentative Cease and Desist Order, ¶ 6, pgs. 3-4. These statements imply that Newmont has resisted efforts to respond to the Drew Tunnel flow. On the contrary, since the issue first came up, Newmont has been an active participant in moving the Drew Tunnel flow towards sound management and resolution, by funding and conducting the various investigations and studies, in close coordination with the Regional Board staff, to identify the effective final remedy for the Drew Tunnel flow.

Specifically, Newmont characterized the drainage, explored the range of source control strategies and defined the optimum water treatment option. As the capstone to this work, at the end of this month, Newmont will be submitting to the Regional Board the Drew Tunnel Alternatives Evaluation, which will provide the technical support and rationale for the final management plan for the Drew Tunnel flow. Furthermore, the reason it has taken eight years to get to this point has much to do with the City refusing to characterize, and resisting Newmont's efforts to characterize, the Drew Tunnel flow early on and then the City's later insistence on pursuing a plugging option that was both technically flawed and socially and environmentally irresponsible. It is the City, not Newmont, who has made this problem a near-decade long undertaking.

Finally, Newmont would also like to take this opportunity to object to certain statements in the City's June 27, 2008 Semi-Annual Progress Report to the Board. As an initial matter, and for the reasons already noted, Newmont again objects to the City's characterization of the Drew Tunnel flow as emanating from the "Newmont mine property." See City of Grass Valley Semi-Annual Progress Report, June 27, 2008, pg. 4.

The progress report also mischaracterizes the 13267 Order issued to Newmont on July 25, 2007, in stating that "the order requires Newmont to determine how to treat and/or dispose of any remaining water discharged from the Drew Tunnel." See City of

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Grass Valley's Semi-Annual Progress Report, June 27, 2008. The 13267 Order most certainly requires Newmont to complete certain technical studies and reports; for example, it requires Newmont to investigate potential sources of water and pollutants in the Drew Tunnel flow and assess possible treatment and source control methods to reduce the quantity of pollutants discharged to waters of the State. The 13267 Order, however, does not require Newmont "to treat and/or dispose of any remaining water discharged from the Drew Tunnel."

Newmont respectfully requests that the Tentative NPDES Permit and the Tentative Cease and Desist Order be revised to accurately reflect the facts noted herein. Newmont also requests that these comments be accepted and incorporated into the administrative record for this permit proceeding.

Sincerely yours,

A handwritten signature in black ink, appearing to read "EHT/ED", is written over the typed name.

Elizabeth H. Temkin

EHT/amv
Attachments

cc: Jacqui Beckett (via email)



Newmont Mining Corporation
1700 Lincoln Street
Denver, CO 80203
Phone 303.863.7414
Facsimile 303.837.5837
www.newmont.com

November 30, 2007

VIA EMAIL AND US MAIL

Ms. Pamela Crendon
Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114
pcrendon@waterboards.ca.gov

RE: Draft Cease and Desist Order, City of Grass Valley Wastewater Treatment Plant

Dear Ms. Crendon:

During a meeting with the City of Grass Valley and the Regional Board this week, Newmont USA Ltd. was made aware that the Regional Board is holding a hearing on December 6, 2007, to consider a revised Cease and Desist Order, relating to the City's NPDES Permit at the City's Wastewater Treatment Plant ("WWTP").

Newmont USA is concerned that it was not given notice of the draft Order and scheduled hearing, given that the Order contains findings relating to Newmont USA, including incorrect statements to the effect that Newmont USA is the owner of the Drew Tunnel. Further, given Newmont's litigation with the City, related directly to the matters addressed in the draft Order, and its involvement with the City and the Board in matters relating to the Drew Tunnel Discharge, Newmont USA should have been provided with notice and an opportunity to comment. *See* 23 CCR § 647.2(e) ("Notice shall be given to any person known to be interested in the proceedings on the agenda.").

Regarding the draft Order, Newmont USA does not object to extending the City's compliance date for effluent limitations, but does take issue with the Board's statements that Newmont USA is the owner of the Drew Tunnel and is "the inactive mine owner." Such statements are false, as Newmont USA is not the owner of the Massachusetts Hill Mine or the Drew Tunnel.

As the Regional Board is aware, the Drew Tunnel drainage is located on the City's WWTP property, along Allison Ranch Road, in Grass Valley, California. Investigations have revealed that the Drew Tunnel is a drain tunnel for a former mine known as the Massachusetts Hill Mine. There is no dispute that the City is the owner of the WWTP property. A subsidiary of Newmont USA, New Verde Mines LLC, holds a mineral reservation under the City's property below fifty feet, but this interest does not equate to ownership of either the Massachusetts Hill Mine or the Drew Tunnel. Newmont USA has no property interest of any sort at the City's WWTP.

Attachment A

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Further, a consultant hired by the City, Donald Olsson, stated in a deposition that "the City owns the top 50 feet total in fee, and they own 50 feet below less the reserved mineral interest." A consultant of Newmont USA, Pat Mitchell, a longtime California mining attorney, states the City is the owner of any underground mine workings under its property.

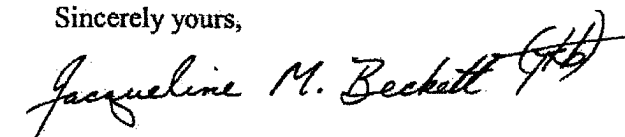
The Drew Tunnel Portal, which is located on the City's WWTP property, is owned and controlled by the City. The City also owns the water emanating from the Drew Tunnel Portal. See Holmes v. Nay, 186 Cal. 231, 236 (1921) (water rights transferred automatically with conveyance of property); Stanislaus Water Co. v. Bachman, 152 Cal. 716, 724 (1908).

Accordingly, it is inaccurate and inappropriate for the Regional Board to state that Newmont USA is the owner of the Drew Tunnel or long-defunct Massachusetts Hill Mine.

Newmont USA also objects to the City's comment No. 4 and the Board's concurrence with the City's suggested edit that Finding No. 5 be modified to indicate that the Drew Tunnel is the primary source of manganese and aluminum to the WWTP. A comparison of the levels of aluminum present in the Drew Tunnel discharge with the levels present in the WWTP influent indicates that the Drew Tunnel contributes less than 10% of the aluminum entering the WWTP. Accordingly, we request that "aluminum" not be included in Finding No. 5.

Newmont USA requests that the draft Order be revised to omit these inaccurate statements relating to Newmont USA and to the levels of aluminum in the Drew Tunnel discharge. Further, we request that these comments be accepted and incorporated into the administrative record, as doing so does not prejudice any party. As an "interested person," a representative for Newmont will attend to give comment at the hearing scheduled for December 6, 2007, unless revisions to the draft Order are made prior to the hearing and consistent with these comments.

Sincerely yours,


Jacqueline M. Beckett
Senior Counsel

cc: Steve Rosenbaum
Elizabeth Temkin, Esq.

TEMKIN WIELGA HARDT & LONGENECKER LLP

1900 Wazee Street, Suite 303
Denver, CO 80202

Elizabeth H. Temkin
Direct: (303) 382-2900
temkin@twhlaw.com

Phone: (303) 292-4922
Fax: (303) 292-4921
www.twhlaw.com

June 14, 2007

VIA EMAIL & FEDERAL EXPRESS

Steve E. Rosenbaum
Senior Engineering Geologist
Land Disposal Program
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Dear Mr. Rosenbaum,

This letter is in response to the Draft Cleanup and Abatement Order, Drew Tunnel Nevada County ("Draft Order"), issued by the California Regional Water Quality Control Board, Central Valley Region (the "Board"). Newmont USA Limited ("Newmont") appreciates the Board's two week extension for the receipt of written comments and offers the following general comments, followed by specific comments which correlate with the numbered paragraphs of the Draft Order.

GENERAL COMMENTS

The Board is without jurisdiction to issue a Cleanup and Abatement Order to Newmont. Newmont is neither a present nor past discharger from whom the Board may require cleanup and abatement or demand application for an NPDES permit or waste discharge requirements under federal or state law. The Board's findings are not supported by the weight of the evidence, but rather, reflect that the Board simply adopted the unsubstantiated and inaccurate assertions of the City of Grass Valley ("City") in its lawsuit against Newmont, apparently in response to the City's repeated ex parte requests to the Board to issue a Cleanup and Abatement Order to Newmont, notwithstanding the lawsuit. In addition, Newmont incorporates by reference its April 19, 2007 letter from J. Beckett to P. Creedon, which addresses in detail the facts supporting Newmont's position that it is not a discharger subject to this Board's jurisdiction. A review of the facts, addressed specifically below, reflect that the City is the party responsible for management of the Drew Tunnel discharge.

Attachment B

SPECIFIC COMMENTS

Newmont has the following specific comments related to the draft Order:

1. Though water drains from the Massachusetts Hill Mine workings through the Drew Tunnel, information regarding all of the source or sources of the water is incomplete.

2. Between 1929-57, Empire Star Mines Company ("Empire Star"), a predecessor to Newmont, formerly owned the property where the Massachusetts Hill Mine and Drew Tunnel are located. On May 6, 1957, Empire Star was merged into Newmont Mining Corporation (a predecessor of Newmont USA) and its real property assets were transferred to New Verde Mines Company, a subsidiary of Newmont Mining Corporation. Assuming the Drew Tunnel discharged water between 1929-1957 (no such evidence has been offered), there is no indication that Empire Star, Newmont Mining Corporation, or New Verde Mines Company had knowledge of such discharge, as required under section 13304(a). *See Redevelopment Agency of the City of Stockton v. Burlington Northern*, 2006 WL 931059, *4 (E.D. Cal. 2006).

Further, Newmont does not hold any mineral rights in the Grass Valley area. A subsidiary of Newmont, New Verde Mines LLC (successor to New Verde Mines Company), holds certain mineral rights, below fifty feet, underlying the western portion of the City's wastewater treatment plant ("WWTP") property (the "Site"). The fact New Verde is a subsidiary of Newmont USA is not sufficient grounds for a finding that Newmont holds those mineral rights. In any event, such mineral reservation would not be a sufficient basis to be found to be a "discharger." (See April 19, 2007 letter from J. Beckett to P. Creedon for further detail regarding New Verde's reserved mineral rights.)

Finally, the City routed the Drew Tunnel discharge through its WWTP, where it is discharged under the City's NPDES permit (No. CA0079898) and the accompanying Cease and Desist Order; thus, the discharge does not "cause or permit, or threaten to cause or permit, pollutants to enter waters of the state and create or threaten to create a condition of degradation, pollution, or nuisance."

3. Newmont is not a present owner of the underground mine workings, nor, as detailed in Comment 2, above, does it hold any mineral rights. The City owns the property where any alleged waste is discharged to waters of the state, and has permitted such discharges under its NPDES Permit.

4. See Comment No. 3.

5. No Comment.

6. The WWTP is located on land formerly owned by Empire Star. The City acquired the portion of the Property east of Wolf Creek from Empire Star in 1949. The City acquired the portion of the Property west of Wolf Creek from the Boyce Thompson Institute for Plant

Research in 1972. Boyce Thompson had acquired the property from New Verde Mines Company in 1958.

7. Attachment A does not reflect the topography of the area, as stated by the Board, and does not include a depiction of Allison Ranch Road. The elevations of the Drew Tunnel and the hillside to the west are believed to be approximations, as there are no known surveys of the features.

8. Attachment A does not depict the boundaries of APN 29-290-26, or the WWTP discharge point identified in the City's NPDES permit. Though Attachment B is described as identifying the location of Wolf Creek and other site features, it also includes purported "potential discharge point[s] for mine drainage following tunnel plug installation." This diagram, though it does not so indicate, is the work product of a consultant hired by the City in the course of litigation and its use by the Board, as a presumed neutral and accurate depiction of site features, is inappropriate.

9. In 2000, the City was constructing a secondary clarifier basin, not a pond. The City was aware that the Drew Tunnel discharge was emanating from a mine tunnel as early as 1998. In 1998, the City began the design phase for the WWTP expansion. In July 1998, the City and its consultant "investigated" the Drew Tunnel by poking a pvc pipe in the opening, to determine the size and shape of the "cavern." The City, in 1998, referred to the Drew Tunnel as a "mine vent shaft" and an "existing mine drainage." The City's design engineer recommended the City do further investigations to determine its origin and characteristics before going forward with construction plans, but the City refused. The City also did not report the drainage to the Board at this time or try to work with the Board pre-construction on the regulatory considerations and options. This would have allowed the City to consider other design options and alternatives to its construction plans, such that the ensuing events and regulatory triggers could have been avoided.

10. In the Sportfisher litigation, the City identified the diversion to the WWTP plant as a "permanent diversion" not an "interim" measure.

11. The Drew Tunnel originates at the Massachusetts Hill Shaft, not at the Watt Incline.

12. No Comment.

13. The statement that Empire Star Mines Company Limited is a "Newmont company" is ambiguous and misleading, and simply reflects, verbatim, the City's litigation position. The Board's reliance on such statements as "findings" is inappropriate and without support. Empire Star was incorporated in 1929. During the time the company operated, a Newmont subsidiary, Newmont Empire Mine Company, owned anywhere from 30% to 51% of the stock. For further description of Empire Star, see Comment 2, above, and the April 19, 2007 letter from J. Beckett to P. Creedon.

The statement that "the Massachusetts Hill Mine was consolidated with other mines and is subsequently referred to as the North Star Mine" again mimics the City's litigation posture and is similarly ambiguous and misleading. In 1929, long after mining had ceased, ownership of the Massachusetts Hill Mine was conveyed, along with numerous other mines, from North Star Mines Company to Empire Star. The Massachusetts Hill Mine was never "consolidated" with any other mine and was never mined after 1901. Further, available maps show no physical connection between the Massachusetts Hill Mine and the North Star Mine.

14. The deed from Empire Star Mines Company Limited to Newmont Mining Corporation conveyed the real property of Empire Star to Newmont Mining. Among others, that conveyance included the property known as the North Star Mine. On January 3, 1958, New Verde Mines Company conveyed the Site to Boyce Thompson Institute for Plant Research, Inc. In October 1962, Boyce Thompson conveyed the Site to the City of Grass Valley. On December 12, 1966, New Verde Mines Company conveyed to Newmont Exploration Limited certain real property described in an Indenture, recorded December 16, 1966. New Verde Mines Company was not dissolved until January 9, 1967. In 1998, Newmont Exploration Limited conveyed certain property interests in the Grass Valley area to Newmont North America LLC. By a certificate dated October 16, 1998, Newmont North America LLC changed its name to New Verde Mines LLC.

15. The phrase "Newmont's land holdings" is inaccurate, as Newmont has no "land holdings" in Grass Valley (see Comment No. 2).

16. The sulfate concentration and pH are not necessarily reflective of the presence of acid mine drainage, as the sulfate concentrations are extremely low and the pH much higher than typical acid mine drainage conditions. The sulfate and pH values may be more reflective of the natural variability of groundwater conditions, including shallow groundwater along a bedrock redox zone. Presently, the Drew Tunnel discharge is routed through the WWTP and thus no discoloration occurs in Wolf Creek during high stormwater events.

17. The statements of paragraph 17 are inconsistent, as they state both that the sampling "suggested no problems," yet "laboratory detection levels were high compared to water quality criteria." Results from the February 2000 sampling event did not exceed water quality criteria at that time.

18. No comment.

19. The conditions under which the samples were collected is unknown, including whether increased turbidity was related to high flow conditions.

20. The Joint Investigation Agreement between Newmont and the City was negotiated in the context of confidential Rule 408 settlement communications. Newmont did not concede any liability and maintains it is not liable for management of the Drew Tunnel discharge.

21. The last sentence of paragraph 21 misstates the facts. In October 2002, MWH provided a scope of work for further evaluation of the feasibility of an adit plug. MWH did not recommend "additional steps," but rather, was requested to present a proposal for additional investigation. Further, the scope of work was for additional investigation into the feasibility of a mine plug; not for "additional steps to be taken to plug the tunnel."

22. No Comment.

23. No Comment.

24. This paragraph is irrelevant, unnecessary, and simply states the City's litigation position. No "alternatives" have been identified in the lawsuit.

25. The document titled *TAS Draft Sample Plan for the City of Grass Valley Wastewater Treatment Works* presented a plan for monitoring to characterize the Drew Tunnel flows, not groundwater monitoring or characterization.

26. No Comment.

27. The Design Investigation Work Plan proposed certain investigations and a conceptual design of a plug with a maximum hydraulic head of fifteen feet and a "flow through" release once the maximum head was reached.

28. No Comment.

29. No Comment.

30. No Comment.

31. No Comment.

32. The Regional Board has indicated that a plug is not a viable alternative unless it can be assured the water will not discharge elsewhere. (See, e.g., Nov. 22, 2004 letter from RWQCB to R. Golnik.) The "plugging" alternative identified in the City's November 2004 work plan titled *Design Investigation Work Plan, Drew Tunnel Plug* proposed installation of a plug, designed to control water flow, but still requiring treatment or management of water that exceeded the conceptual design head of fifteen feet.

33. A review of the City's Discharge Monitoring Reports reflects that manganese is the only constituent for which the City has not been able to consistently meet effluent limits. In fact, the City has demonstrated continuous compliance with the effluent limits for aluminum and iron since August 2003 (June 1, 2006 City of Grass Valley Status and Progress Report to Board).

34. The information in paragraph 34, dating from September 2003, reflects a limited number of sampling events. Significantly more data is now available and the sampling results should be updated to reflect all of the data that has been collected. The NPDES permit average monthly concentration and load limits shown in the table are from the draft NPDES permit and do not reflect the current effluent limitations in the City's NPDES permit.

35. The draft CAO does not have a numbered paragraph 35.

36. The table relating to paragraph 36 should be updated to reflect recent data; Newmont will provide additional available data under separate cover. Newmont does not have information regarding the basis for the Board's hardness determination of 13 mg/l to consider whether the effluent limits of copper, lead and zinc are appropriate.

37. A comparison of the relative copper and aluminum loading to the WWTP from the Drew Tunnel and the treatment headworks influent stream reflects the Drew Tunnel contributes only 2% of the copper and 2% of the aluminum to the WWTP. Therefore, removal of the copper and aluminum loading from the Drew Tunnel would not substantially aid the City in meeting its WWTP effluent limitations for these constituents.

38. The availability of groundwater information is unknown. Determining background concentrations, and sources of any groundwater impacts, in a mineralized zone is particularly problematic.

39. – 46. No Comment.

47. Newmont is not responsible for the Drew Tunnel discharge. As described in the comments above and the April 19, 2007 letter from J. Beckett to P. Creedon, Newmont is not a present or past discharger at the Drew Tunnel.

48. No Comment.

49. Newmont does not have a duty to apply for an NPDES permit, as alleged, because Newmont does not "discharge or propose to discharge pollutants," as required by 40 CFR 122.21. Further, the Drew Tunnel discharge is permitted by the City under its NPDES Permit. Similarly, as noted in Comments 2 and 3, above, Newmont does not discharge wastes that affect waters of the State.

50. No Comment.

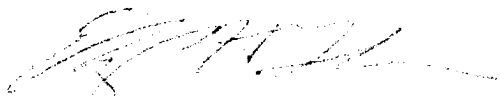
51. No Comment.

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REQUIRED ACTIONS

Newmont agrees that further investigation of the sources of loading to the Drew Tunnel discharge is advisable. That said, Newmont is not a past or present discharger, does not own the water, the property or hold any property rights proximate to the discharge, and is not responsible for the management of the Drew Tunnel discharge.

Sincerely yours,



Elizabeth H. Temkin

EHT/csi

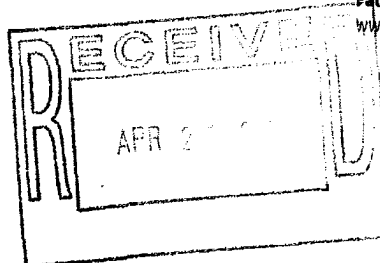
cc: Frances McChesney (via email)
Jacqui Beckett (via email)



NEWMONT

The Gold Company

Newmont Mining Corporation
1700 Lincoln Street
Denver, CO 80203
Phone 303.863.7414
Facsimile 303.837.5837
www.newmont.com



April 19, 2007

Ms. Pamela Creedon
Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Dear Ms. Creedon:

Last month, Newmont, in the course of litigation, received from the City of Grass Valley ("City") a copy of a letter sent by the City to the Regional Water Quality Control Board ("Board") in early December 2006, in which the City argues that Newmont is responsible for the Drew Tunnel drainage. The City, in its letter, makes several inaccurate and misleading statements; thus Newmont asks you to consider the following response to the City's letter. Copies of cited documents are attached to this letter.

As the Regional Board is aware, the City of Grass Valley owns and operates a Wastewater Treatment Plant ("WWTP") along Allison Ranch Road, in Grass Valley, California. The WWTP sits on two parcels of land, purchased by the City in 1949 and 1972, respectively. The first parcel, on the east side of Wolf Creek, was purchased by the City from Empire Star Mines Company, Limited ("Empire Star") to construct its WWTP ("east parcel"). In 1972, the City purchased the remainder of the Property, on the west side of Wolf Creek, from the Boyce Thompson Institute of Plant Research, for expanding the WWTP ("west parcel"). The Drew Tunnel drainage is located on the west parcel.

In February 2000, the City notified that Regional Board that, during excavation activities relating to the expansion of the WWTP, the City encountered a drainage that it determined to be emanating from an abandoned mine tunnel. While the City has stated to Newmont, the Board and a federal court that it did not know of the Drew Tunnel until 2000, in fact, the City was aware that the Drew Tunnel discharge was mining-related as early as 1998.¹ In 1998, the City began the design phase for the WWTP expansion. In July 1998, the City and its consultant "investigated" the Drew Tunnel by poking a pvc pipe in the opening, to determine the size and

¹ The City admits to knowing about the drainage itself for "decades." (2/24/00 EcoLogic Memorandum) Further, as the Regional Board knows, the City was well aware of the presence of numerous mining features onsite, including the "Lower Seep" that was discovered and abandoned in 1993, mill sands that were discovered in 1993 and 1998, and mining foundations located only yards from the Drew Tunnel Portal.

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shape of the "cavern." The City, in 1998, referred to the Drew Tunnel as a "mine vent shaft" and an "existing mine drainage." (July 9, 1998 Notes of Jeffrey Hauser; July 30, 1998 Eco:Logic Meeting Memorandum; Hauser Dep. at 24:24-25, 28:25 – 29:5) The City's design engineer, Jeffrey Hauser, recommended the City do further investigations to determine its origin and characteristics before going forward with construction plans, but the City refused. (Hauser Dep. at 24:24-25, 28:25 – 29:5.) The City also did not report the drainage to the Board at this time or try to work with the Board pre-construction on the regulatory considerations and options. This would have allowed the City to consider other design options and alternatives to its construction plans, such that the ensuing events and regulatory triggers could have been avoided.

As the City states in its letter to the Board, investigations have revealed that the Drew Tunnel is a drain tunnel for a former mine known as the Massachusetts Hill Mine. The Massachusetts Hill Mine operated between 1850 and 1901. (USGS Excerpt, p. 63) In its early years, the Mine was owned and operated by several different parties, until the North Star Mines Company purchased it in 1894. Shortly thereafter, in 1901, it was closed. There is no evidence that the Mine was ever operated again.

In 1929, Empire Star purchased certain of the assets of North Star Mines Company, including the Massachusetts Hill Mine. A Newmont subsidiary, Newmont Empire Mine Company, owned stock in Empire Star (its interest appears to have ranged between 30-51%, depending on the year). The Newmont Empire Mine Company was dissolved in 1939 and its interest in Empire Star passed to Newmont. In 1957, Empire Star was merged into Newmont, and many of its assets were sold, including the City's west parcel. Limited mineral rights below fifty feet were reserved on the west parcel and those rights are presently held by New Verde Mines LLC, a Newmont subsidiary. However, neither New Verde nor Newmont have ever mined the Massachusetts Hill Mine.

These mineral rights are the basis for the City's assertion that Newmont owns the underground mine workings. However, the City's own expert witness, Donald Olsson, stated in his deposition that "the City owns the top 50 feet total in fee, and they own 50 feet below less the reserved mineral interest." (Olsson Dep. Excerpt) Further, Newmont's expert, Pat Mitchell, a longtime California mining attorney, states the City is the owner of any underground mine workings under its property. (Pat Mitchell Report, enclosed.) See 63C Am. Jur. 2d Property § 12 (Under the accepted maxim of property law, the title to land extends downward from the surface to the center of the earth, and whatever is in a direct line between the surface of any land and the center of the earth belongs to the surface owner.); see also Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 60 (1898) (Although a surface owner may convey his interest in the minerals beneath the surface, nothing changes the general proposition that the owner of the surface owns all beneath).

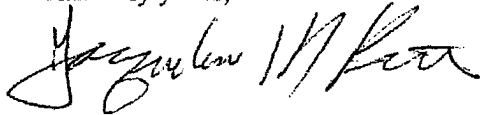
In closing, Newmont is not the owner of the Massachusetts Hill Mine or the Drew Tunnel. Further, Newmont never operated the Massachusetts Hill Mine or the Drew Tunnel. The limited

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mineral rights held by New Verde do not equate to ownership of the underground mine workings. The Drew Tunnel Portal, which is located on the City's WWTP property, is owned and controlled by the City. The City also owns the water emanating from the Drew Tunnel Portal. See Holmes v. Nay, 186 Cal. 231, 236 (1921) (water rights transferred automatically with conveyance of property); Stanislaus Water Co. v. Bachman, 152 Cal. 716, 724 (1908). The City is and should continue to be responsible for management of the Drew Tunnel Portal and drainage.

We appreciate your time and consideration. If you have any questions or would like to meet to discuss these issues further, Newmont welcomes such dialogue.

Sincerely yours,



Jacqueline M. Beckett
Senior Counsel

Attachments

cc: Frances McChesney, Esq.
Elizabeth Temkin, Esq. ✓